

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Sharon Beth Taylor,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-23-01857-PHX-JJT

ORDER

15 At issue is the denial of Plaintiff Sharon Beth Taylor’s Application for Disability
16 Insurance Benefits by the Social Security Administration (“SSA”) under the Social
17 Security Act (“the Act”). Plaintiff filed a Complaint (Doc. 1) seeking judicial review of
18 that denial, and the Court now addresses Plaintiff’s Opening Brief (Doc. 9, “Pl. Br.”),
19 Defendant Social Security Administration Commissioner’s Answering Brief (Doc. 13),
20 and Plaintiff’s Reply (Doc. 14). The Court has reviewed the briefs and Administrative
21 Record (Doc. 8, “R.”) and now affirms the decision of the Administrative Law Judge
22 (“ALJ”) (R. at 13–23).

23 **I. BACKGROUND**

24 Plaintiff protectively filed an application for Disability Insurance Benefits on
25 November 27, 2019, for a period of disability beginning October 25, 2019. (R. at 13.)
26 Plaintiff’s claim was initially denied on April 2, 2020, and upon reconsideration on
27 October 13, 2020. (R. at 13.) Plaintiff then testified at a hearing held before an ALJ on
28 May 20, 2022. (R. at 29–57.) On June 28, 2022, the ALJ denied Plaintiff’s Application

(R. at 13–23), and on July 12, 2023, the Appeals Council denied Plaintiff’s request for review of the ALJ’s decision (R. at 1–3). On September 5, 2023, Plaintiff filed this action seeking judicial review.

The Court has reviewed the medical evidence and finds it unnecessary to provide a complete summary here. The pertinent medical evidence will be discussed in addressing the issues raised by the parties. In short, upon considering the medical records and opinions, the ALJ found that Plaintiff had the following severe medically determinable impairments: degenerative disc disease, status post right knee surgery with osteoarthritis of the right knee, osteoarthritis of the shoulders, mild right peroneal neuropathy of the right lower extremity, chronic pain syndrome, hypertension, fibromyalgia, and obesity. (R. at 16.) The ALJ also found the following non-severe medically determinable impairments: neuropathy, irritable bowel syndrome, depressive disorder, and anxiety disorder. (R. at 16.)

Ultimately, the ALJ determined that Plaintiff “does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404.” (R. at 18.) The ALJ found that Plaintiff has the residual functional capacity (“RFC”) to perform “sedentary work” with no exposure to hazards. (R. at 18.) Based on the vocational expert’s answers to hypothetical questions, the ALJ concluded that Plaintiff could perform past relevant work as a medical receptionist and is not disabled under the Act. (R. at 22–23.)

II. LEGAL STANDARD

In determining whether to reverse an ALJ’s decision, the district court reviews only those issues raised by the party challenging the decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The court may set aside the Commissioner’s disability determination only if the determination is not supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is more than a scintilla, but less than a preponderance; it is relevant evidence that a reasonable person might accept as adequate to support a conclusion considering the record as a whole. *Id.* To determine whether substantial evidence supports a decision, the court must consider

1 the record as a whole and may not affirm simply by isolating a “specific quantum of
 2 supporting evidence.” *Id.* As a general rule, “[w]here the evidence is susceptible to more
 3 than one rational interpretation, one of which supports the ALJ’s decision, the ALJ’s
 4 conclusion must be upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002)
 5 (citations omitted).

6 To determine whether a claimant is disabled for purposes of the Act, the ALJ
 7 follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the burden of
 8 proof on the first four steps, but the burden shifts to the Commissioner at step five. *Tackett*
 9 *v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At the first step, the ALJ determines whether
 10 the claimant is presently engaging in substantial gainful activity. 20 C.F.R.
 11 § 404.1520(a)(4)(i). If so, the claimant is not disabled, and the inquiry ends. *Id.* At step
 12 two, the ALJ determines whether the claimant has a “severe” medically determinable
 13 physical or mental impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If not, the claimant is not
 14 disabled, and the inquiry ends. *Id.* At step three, the ALJ considers whether the claimant’s
 15 impairment or combination of impairments meets or medically equals an impairment listed
 16 in Appendix 1 to Subpart P of 20 C.F.R. Part 404. 20 C.F.R. § 404.1520(a)(4)(iii). If so,
 17 the claimant is disabled. *Id.* If not, the ALJ proceeds to step four. *Id.* At step four, the ALJ
 18 assesses the claimant’s RFC and determines whether the claimant can still perform past
 19 relevant work. 20 C.F.R. § 404.1520(a)(4)(iv). If so, the claimant is not disabled, and the
 20 inquiry ends. *Id.* If not, the ALJ proceeds to the fifth and final step, where he determines
 21 whether the claimant can perform any other work in the national economy based on the
 22 claimant’s RFC, age, education, and work experience. 20 C.F.R. § 404.1520(a)(4)(v). If
 23 so, the claimant is not disabled. *Id.* If not, the claimant is disabled. *Id.*

24 **III. ANALYSIS**

25 Plaintiff raises two arguments for the Court’s consideration: (1) The ALJ erred by
 26 rejecting Plaintiff’s symptom testimony without specific, clear, and convincing reasons
 27 supported by substantial evidence in the record, and (2) the ALJ erred by rejecting the
 28

1 assessments of Plaintiff's treating physician without sufficient reasons supported by the
2 record.

3 **A. Plaintiff's Symptom Testimony**

4 Plaintiff first argues that the ALJ improperly rejected her symptom testimony.
5 (Pl. Br. at 10.) Although credibility is the province of the ALJ, an adverse credibility
6 determination requires the ALJ to provide "specific, clear and convincing reasons for
7 rejecting the claimant's testimony regarding the severity of the claimant's symptoms."
8 *Treichler v. Comm'r of Soc. Sec.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (citing *Smolen v.*
9 *Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996)). "In evaluating the credibility of pain
10 testimony after a claimant produces objective medical evidence of an underlying
11 impairment, an ALJ may not reject a claimant's subjective complaints based solely on a
12 lack of medical evidence to fully corroborate the alleged severity of pain." *Burch v.*
13 *Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). This is because "pain testimony may establish
14 greater limitations than can medical evidence alone." *Id.* But the ALJ may properly
15 consider that the medical record lacks evidence to support certain symptom testimony. *Id.*
16 at 681. The ALJ may also properly consider inconsistencies in the claimant's testimony,
17 including inconsistencies between the claimant's testimony of daily activities and symptom
18 testimony. *Id.*

19 Plaintiff testified at the hearing that she could sit for only thirty minutes, stand for
20 ten minutes, and walk for twenty-five steps, and she could not concentrate or focus due to
21 her pain. (R. at 42–48.) The ALJ found that, although Plaintiff's impairments could
22 reasonably cause her alleged symptoms, her "statements concerning the intensity,
23 persistence and limiting effects of these symptoms are not entirely consistent with the
24 medical evidence and other evidence in the record for the reasons explained in this
25 decision." (R. at 19.) Those reasons are as follows.

26 First, the ALJ stated that while Plaintiff reported disabling symptoms and
27 limitations, she mentioned that she traveled to Maine to visit family, and she attends church
28 once a week. (R. at 19–20.) The ALJ also cited record evidence that Plaintiff routinely

1 takes care of her personal hygiene, cares for her cat, prepares simple meals, does laundry,
 2 shops for groceries, drives, and attends her medical appointments. (R. at 21.) The ALJ
 3 added that Plaintiff reported she enjoys reading and crocheting. (R. at 21.) And although
 4 Plaintiff testified that she had trouble concentrating and finding words while she was in
 5 pain, the ALJ noted that this was not observed by her treating physicians. (R. at 21.)

6 The Court, therefore, disagrees with Plaintiff's contention that the ALJ failed to
 7 connect the medical records to specific inconsistencies in Plaintiff's testimony. (Pl. Br. at
 8 11.) The ALJ noted, for example, that while Plaintiff stated she could only sit for thirty
 9 minutes at a time, she reported that she traveled to Maine in 2021, which the ALJ
 10 reasonably "presum[ed] would require the ability [to sit] for more than 30 minutes at a
 11 time." (R. at 21.) The ALJ also specifically stated that Plaintiff's testimony about loss of
 12 concentration was not observed by her treating physicians. (R. at 21.) Moreover, the ALJ
 13 considered Plaintiff's treatment history, which she found did not align with Plaintiff's
 14 complaints of debilitating pain and limitations. (R. at 19–21.) And the ALJ pointed to
 15 Plaintiff's activities of daily living, which she found to be not as limited as would be
 16 expected given Plaintiff's reports of disabling symptoms. (R. at 21.) Thus, although
 17 Plaintiff identifies some medical evidence that is consistent with Plaintiff's testimony, the
 18 inconsistencies identified by the ALJ are sufficient to discount Plaintiff's testimony. *See*
 19 *Smartt v. Kijakazi*, 53 F. 4th 489, 498 n.1 (9th Cir. 2022) (noting that an ALJ may "rely[]
 20 on any contradictions between a claimant's subjective symptom testimony and the
 21 objective medical evidence in the record to discount the symptom testimony" (emphasis
 22 omitted)).

23 **B. The Medical Opinion of Plaintiff's Treating Physician**

24 Plaintiff also argues that the ALJ erred by rejecting the medical opinion of her
 25 treating physician, Dr. Andrew Burrell, without providing sufficient explanation. (Pl. Br.
 26 at 17.)

27 The Ninth Circuit no longer accords special deference to a treating or examining
 28 physician. *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022). In 2017, the Social

1 Security Administration amended the regulations for evaluating medical evidence. *See*
2 Revisions to Rules Regarding Evaluation of Medical Evidence, 82 Fed. Reg. 5844, 5844
3 (Jan. 18, 2017). The 2017 regulations provide that “[w]e will not defer or give any specific
4 evidentiary weight, including controlling weight, to any medical opinion The most
5 important factors we consider when we evaluate the persuasiveness of medical opinions
6 . . . are supportability . . . and consistency.” 20 C.F.R. § 404.1520c(a). Other factors, which
7 an ALJ “may, but [is] not required to[] explain” when evaluating the persuasiveness of a
8 medical opinion, are the medical source’s “relationship with the claimant,”
9 “specialization,” “familiarity with the other evidence in the claim,” and “understanding of
10 our disability program’s policies and evidentiary requirements.” 20 C.F.R.
11 § 404.1520c(b)(2), (c).

12 Moreover, the Ninth Circuit held its requirement that ALJs provide “specific and
13 legitimate reasons” for rejecting a treating or examining doctor’s opinion is incompatible
14 with the revised regulations. *Woods*, 32 F.4th at 790. Nonetheless, in rejecting a treating or
15 examining doctor’s opinion as unsupported or inconsistent, an ALJ must provide an
16 explanation—that is, reasons—supported by substantial evidence. *Id.* This means that the
17 ALJ “must ‘articulate . . . how persuasive’ [he] finds ‘all of the medical opinions’ from
18 each doctor or other source, and ‘explain how [he] considered the supportability and
19 consistency factors’ in reaching these findings.” *Id.* (citing 20 C.F.R. § 404.1520c(b),
20 (b)(2)).

21 Dr. Burrell submitted three opinions on Plaintiff’s behalf, indicating in each of them
22 that Plaintiff could sit only two hours in an eight hour workday and could “stand/walk”
23 less than two hours in a workday. (R. at 317, 471, 478.) He also opined that Plaintiff
24 suffered from headaches or mental fatigue that would require her to rest twenty minutes to
25 an hour. (R. at 318, 472, 479.)

26 First, the ALJ found Dr. Burrell’s opinion on Plaintiff’s ability to sit contradictory
27 to other medical reports that she had a normal range of motion, strength, and sensation, and
28 no tenderness, kyphosis, or scoliosis. (R. at 22.) And while the ALJ acknowledged

1 Dr. Burrell's opinion on Plaintiff's headaches and mental fatigue, she noted that the
2 medical records show no treatments for headaches or indicate any decreased attention or
3 concentration due to mental fatigue. (R. at 22.) Finally, the ALJ added that Dr. Burrell's
4 opinions appear to correspond directly with Plaintiff's self-reported limitations and thus do
5 not seem to be an independent opinion.

6 Plaintiff argues that it is improper for an ALJ to fault a doctor for relying on a
7 claimant's reported symptoms. (Pl. Br. at 19.) But while Plaintiff is correct that an ALJ
8 may not fault a treating physician simply for relying in part on a patient's self-reports, "[i]f
9 a treating provider's opinions are based 'to a large extent' on an applicant's self-reports
10 and not on clinical evidence, and the ALJ finds the applicant not credible, the ALJ may
11 discount the treating provider's opinion." *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir.
12 2014) (quoting *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008)).

13 Here, the record reflects that Plaintiff visited Dr. Burrell, requested he fill out social
14 security forms for her, and reported to him that her pain and fatigue keep her from working
15 eight hours a day; she can walk fifteen minutes at a time; she has to walk, sit, and stand in
16 twenty minute intervals; she has difficulty doing two step jobs; she has mental fatigue and
17 headaches that require rest every hour; her disabilities affect her at least half the day; and
18 she needs at least four breaks during the day. (R. at 323.) Dr. Burrell then completed
19 checkbox assessment forms opining consistently with each of those reported complaints.
20 (R. at 317–18, 471–72, 478–79.) Therefore, the ALJ's conclusion that Dr. Burrell's
21 "opinions appear to correspond directly with the claimant's own report of limitations" and
22 are not "independent" opinions is supported by the record.

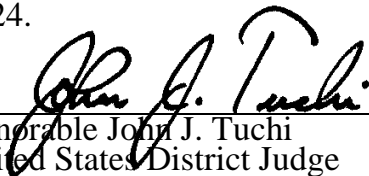
23 Plaintiff also argues that it was improper for the ALJ to reject the portion of
24 Dr. Burrell's opinion about her headaches and mental fatigue, contending that this
25 conclusion "highlights the ALJ's misunderstanding of not only chronic pain, but
26 fibromyalgia symptomology and related fatigue." (Pl. Br. at 20.) But the ALJ's overall
27 decision accounts for Plaintiff's fibromyalgia. The ALJ's rejection of this specific opinion
28 was based on the reasoning that a claimant who experiences disabling headaches or mental

1 fatigue would be expected to seek treatment for such impairments, or that her treating
2 providers would note decreased attention or concentration. (R. at 22.) This line of thinking
3 is permissible. *See Chaudry v. Astrue*, 688 F.3d 661, 672 (9th Cir. 2012) (“[I]f a claimant
4 complains about disabling pain but fails to seek treatment . . . for the pain, an ALJ may use
5 such failure as a basis for finding the complaint unjustified or exaggerated.” (quoting *Orn*
6 *v. Astrue*, 495 F.3d 625, 638 (9th 2007))). The ALJ, therefore, provided sufficient reasons
7 for discounting Dr. Burrell’s medical opinion that were supported by substantial evidence.

8 **IT IS THEREFORE ORDERED** affirming the June 28, 2022, decision of the
9 Administrative Law Judge (R. at 13–23).

10 **IT IS FURTHER ORDERED** directing the Clerk of Court to enter judgment
11 accordingly and close this matter.

12 Dated this 19th day of August, 2024.

13 
14 Honorable John J. Tuchi
15 United States District Judge
16
17
18
19
20
21
22
23
24
25
26
27
28